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ATTORNEYS FOR PLAINTIFF: FRANCO B. BRESSANUTTI AND
IRENE BRESSANUTTI

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FRANCO B. BRESSANUTTI,) Case No.: 10cv1922-MMA
IRENE BRESSANUTTI,)
PLAINTIFF,) **NOTICE OF MOTION FOR ORDER**
VS.) **REMANDING THE CASE TO**
) **STATE COURT AND FOR AN**
) **ORDER FOR PAYMENT OF COSTS**
) **AND ATTORNEY FEES**
ADVANTA BANK, PHILLIPS AND) Date: November 16, 2010
COHEN ASSOCIATES, LTD.,) Time: 2:30p.m.
DOES 1 THROUGH 100,) Place: Courtroom 5
INCLUSIVE,) Judge: Hon. Michael M. Anello
DEFENDANT)
)
)

Notice is hereby given that Plaintiffs herein will move the above entitled court, located at 940 Front Street, San Diego, CA 92101, on November 16, 2010 at 2:30p.m. in Courtroom 5 for an order remanding the above matter to state court. Plaintiffs will also seek an order requiring Defendants Phillips and Cohen Associates, LTD. to pay costs and attorney fees.

The motion will be made on the basis that the notice of removal is defective. (28 U.S.C. 1446, 28 U.S.C. 1447). The motion will also be made based on abstention principles. (Quackenbush v. Allstate Ins. Co., (1996) 517 U.S. 706, 730-731).

The motion will be based on the points and authorities filed herewith, the declaration of William James Campbell, the file herein and on such other information that may develop at the hearing.

Motion to Remand and for Costs On Grounds of Defective
Removal and Abstention

1. Plaintiffs are Franco B. Bressanutti and Irene Bressanutti; Defendants are Advanta Bank and Phillips and Cohen Associates, LTD.

2. On July 30, 2010 Plaintiff sued Defendants Advanta bank and Phillips and Cohen Associates, LTD. for Violation of the California Rosenthal Fair Debt Collections Practices Act and the Federal Fair Debt Collections Practices Act.

1 3. The Lawsuit was originally filed in the Superior
2 Court of California County of San Diego and was given
3 case number 37-2010-00097041-CU-MC-CTL.

4 4. Defendant Phillips & Cohen Associates, LTD. was
5 served on August 13, 2010. (See Exhibit "A" attached to
6 this motion).

7 5. Defendant Advanta Bank was served on August 13,
8 2010. (See Exhibit "B" attached to this motion).

9 6. On September 13, 2010 Defendant Phillips and Cohen
10 Associates, LTD. served the notice on Plaintiff's
11 counsel. However, the notice was not filed with the
12 court until September 14, 2010 pursuant to the courts
13 email notice sent September 16, 2010.

14 7. In Defendant Phillips and Cohen Associates, LTD.'s
15 notice of removal Defendant Phillips and Cohen
16 Associates, LTD. stated "Defendant Phillips & Cohen
17 Associates, LTD. is informed and believes that the
18 service on Defendant Advanta Bank Corp. defective and
19 the FDIC has not been served with the complaint in this
20 matter."

21 8. Not only was Defendant Advanta Bank served by
22 Plaintiff's counsel, William James Campbell, spoke to
23 Jennan Shemise, Esq. senior attorney for the FDIC legal
24 Division on September 9, 2010. Jennan Shemise made
25 contact with William James Campbell because she had the
26 complaint and wanted to discuss settlement.

1 9. The Notice of Removal is defective under 28 U.S.C.
2 §1446 because one of the individually named Defendant,
3 Advanta Bank have not joined in the removal.

4 10. The Notice of Removal is defective because
5 Defendant Phillips and Cohen Associates, LTD. filed the
6 Notice of Removal on Plaintiff 31 days after the
7 original complaint was served on Defendant Phillips and
8 Cohen Associates, LTD.

9 11. The State of California has a vital state
10 interest in both enforcing the Rosenthal Fair Debt
11 Collections Practices Act and enforcing Contracts
12 entered into in the State of California.

14 12. The Federal Fair Debt Collections Practices Act
15 itself recognizes the states interest by allowing each
16 state to adopt its own Debt Collection Regulations.
17 (See 15 U.S.C. §1692n).

18 13. Removal would result in needless intervention
19 by the federal courts and needless conflict with the
20 State of California's administration of its own
21 pervasive regulatory scheme for regulating debt
22 collectors.

23 14. The Court should remand this case back to the
24 California Superior Court on the grounds that all the
25 Defendants were not properly joined, the Notice of
26 Removal was filed more than thirty days after Defendant
27 Philips and Cohen Associates, LTD. was personally
28

served the original complaint, and based on abstention principles.

15. Plaintiffs further move the Court to order the payment to Plaintiff by the removing Defendants of all costs, including attorneys fees, incurred by reason of the removal proceeding in the amount of \$600.00.

Wherefore, the Plaintiff's pray that this case be remanded to the Superior Court of the State of California, County of San Diego, in accordance with the requirements of Title 28, Section 1447(c), and for an order awarding Plaintiff's their costs, including attorney's fees, incurred by reason of the removal proceeding.

Dated: September 17, 2010 The Iniquez Law Firm, P.C.

s/ William J. Campbell
William J. Campbell
Attorney for Plaintiff
Franco B. Brassanutti
and Irene Brassanutti